Gazette No. 27 dated 5th July 1955.

PART I Section iii.

പരസ്യം.

നമ്പർ എൽ. ഡി. (ബി). 3–837/53/ലാ. 1955 ജൂൺ 1.

ലെജിസ്ലേറ്റീവ് അസംബ്ലി പാസ്സാക്കിയതും രാജപ്രമുഖൻ തിരുമനസ്സിലെ അംഗീകാരം സിദ്ധിച്ചിട്ടുള്ളതുമായ താഴെ ചേർക്കുന്ന ആക്റ്റ് പൊതുജനങ്ങളുടെ അറിവിനായി ഇതിനാൽ പ്രസിദ്ധം ചെയ്തിരിക്കുന്നു.

രാജപ്രമുഖൻ തിരുമനസ്സിലെ
ഉത്തരവിൻപ്രകാരം,
എൻ. എസ്സ്. രാധാകൃഷ്ണശർമ്മ,
ഗവൺമെന്റ് സെക്രട്ടറി.

ഗവൺമെന്റ് സെക്രട്ടറിയേറ്റ്,
ലാ ഡിപ്പാർട്ടുമെന്റ്,
തിരുവനന്തപുരം.

1955-ലെ 11-ാം ആക്റ്റ്.

തിരുവിതാംകൂർ-കൊച്ചി വസ്തു (കൃഷിഭൂമികൾ) കൈമാറ്റ ആക്റ്റ്.

കക്ഷികളുടെ ചെയ്തിമൂലമുള്ള കൃഷിഭൂമികളുടെ കൈമാറ്റം സംബന്ധിച്ച നിയമം നിർവചിക്കയും ഭേദഗതി ചെയ്കയും ചെയ്യുന്ന ആക്റ്റ്:—

പീഠിക:—കക്ഷികളുടെ ചെയ്തിമൂലമുള്ള കൃഷിഭൂമികളുടെ കൈമാറ്റം സംബന്ധിച്ച നിയമം നിർവചിക്കയും ഭേദഗതി ചെയ്കയും ചെയ്യേണ്ടതു യുക്തമായിരിക്കകൊണ്ട് ഇൻഡ്യൻ റിപ്പബ്ലിക്കിന്റെ ആറാം സംവത്സരത്തിൽ താഴെകാണുംപ്രകാരം നിയമപ്പെടുത്തിയിരിക്കുന്നു:—

1. ചുരുക്കപ്പേരും, വ്യാപ്തിയും ആരംഭവും.

(1) ഈ ആക്റ്റിന് 1955-ലെ തിരുവിതാംകൂർ-കൊച്ചി വസ്തു (കൃഷിഭൂമികൾ) കൈമാറ്റ ആക്റ്റ് എന്ന പേർ പറയാം.

(2) ഇതു തിരുവിതാംകൂർ-കൊച്ചി സംസ്ഥാനം ഒട്ടാകെ വ്യാപിക്കുന്നതാണ്.

(3) ഗസറ്റ് പരസ്യംമൂലം ഗവൺമെന്റ് നിശ്ചയിക്കുന്ന തീയതി ഇതു് ഊർജ്ജിതത്തിൽ വരുന്നതാണ്.

2. കൃഷിഭൂമി കൈമാറ്റം സംബന്ധിച്ച വ്യവസ്ഥ:—

1882-ലെ വസ്തുകൈമാറ്റ ആക്റ്റ് (1882-ലെ 4-ാം കേന്ദ്ര ആക്റ്റ്), കൃഷിഭൂമിക്കു പ്രയോഗ്യമായ, ഇൻഡ്യൻ ഭരണഘടന ഏഴാം പട്ടിക, 2-ാം ലിസ്റ്റിൽ വിവരിച്ചിട്ടുള്ള ഏതെങ്കിലും സംഗതിയെ സംബന്ധിച്ചിടത്തോളം, തിരുവിതാംകൂർ-കൊച്ചി സംസ്ഥാനനിയമസഭ പാസ്സാക്കിയതെന്നാൽ എങ്ങനെയോ അതുപോലെ തിരുവിതാംകൂർ-കൊച്ചി സംസ്ഥാനത്തു വ്യാപിക്കുന്നതും ഊർജ്ജിതത്തിൽ വരുന്നതുമായിരിക്കും.

3. വൈഷമ്യപരിഹാരത്തിനുള്ള അധികാരം

ഈ ആക്റ്റിലെ വ്യവസ്ഥകൾക്ക് ഊർജ്ജിതം നൽകുന്ന കാര്യത്തിൽ എന്തെങ്കിലും സംശയമോ പ്രയാസമോ ഉണ്ടാവുകയാണെങ്കിൽ, ഗസററു പരസ്യംമൂലം ഗവൺമെന്റിന് ആ സംശയമോ പ്രയാസമോ നീക്കുന്നതിനാവശ്യമെന്നു തോന്നുന്ന വ്യവസ്ഥകൾ ഉണ്ടാക്കുകയോ നിർദ്ദേശങ്ങൾ നൽകുകയോ ചെയ്യാം.

4. 1111-ലെ 17-ാം കൊച്ചി വസ്തു കൈമാററ ആക്റ്റ് ഇതിനാൽ റദ്ദാക്കിയിരിക്കുന്നു.

(A True Translation.)

K. DAMODARAN,
Head Translator to Government.

പരസ്യം.

നമ്പർ—എൽ. ഡി. (ബി) 3—4869/53/ലെ. 1955 ജൂൺ 11.

തിരുവിതാംകൂർ-കൊച്ചി നിയമസഭ പാസ്സാക്കിയ താഴെ പറയുന്ന ആക്ടിന് പ്രസിഡന്റിന്റെ അംഗീകാരം സിദ്ധിച്ചിരിക്കയാൽ പൊതുജനങ്ങളുടെ അറിവിനായി ഇതിനാൽ പ്രസിദ്ധം ചെയ്യുന്നു.

രാജപ്രമുഖൻ തിരുമനസ്സിലെ ഉത്തരവിൻപ്രകാരം,

ഗവൺമെന്റ് സെക്രട്ടറിയേററ്, ലാ ഡിപ്പാർട്ടുമെന്റ്, തിരുവനന്തപുരം.

എൻ. എസ്സ്. രാധാകൃഷ്ണശർമ്മ, ഗവൺമെന്റ് സെക്രട്ടറി.

1955-ലെ 14-ാം ആക്ട്.

1955-ലെ തിരുവിതാംകൂർ-കൊച്ചി വിദ്യുച്ഛക്തി വിതരണ സർചാർജ്ജ് ആക്ട്.

ഗവൺമെന്റോ ലൈസൻസുകാരനോ നടത്തുന്ന എല്ലാ ശക്തിവിതരണത്തിന്റെയും വിലയിന്മേൽ സർചാർജ്ജ് ചുമത്തുന്നതിനും പിരിവു നടത്തുന്നതിനും അധികാരപ്പെടുത്തുന്ന ആക്ട്.

പീഠിക. ഗവൺമെന്റോ ലൈസൻസുകാരനോ നടത്തുന്ന എല്ലാ ശക്തിവിതരണത്തിന്റെയും വിലയിന്മേൽ സർചാർജ്ജ് ചുമത്തുന്നതിനും പിരിവു നടത്തുന്നതിനും അധികാരപ്പെടുത്തുന്നതിന് ഒരു നിയമം ഉണ്ടാക്കുന്നതു യുക്തമാണെന്നു കരുതുന്നതുകൊണ്ട്;

ഇൻഡ്യൻ റിപ്പബ്ലിക്കിന്റെ ആറാം സംവത്സരത്തിൽ താഴെ കാണും പ്രകാരം നിയമപ്പെടുത്തിയിരിക്കുന്നു:—

1. ചുരുക്കപ്പേരും വ്യാപ്തിയും ആരംഭവും. (1) ഈ ആക്ടിന് 1955-ലെ തിരുവിതാംകൂർ-കൊച്ചി വിദ്യുച്ഛക്തി വിതരണ സർചാർജ്ജ് ആക്ട് എന്നു പേർ പറയാം.

(2) ഇതു് തിരുവിതാംകൂർ—കൊച്ചി സംസ്ഥാനമൊട്ടുക്ക് വ്യാപിക്കും.

(3) ഇതു് ഉടനടി ഊർജ്ജിതത്തിൽ വരും.

2. നിർവ്വചനങ്ങൾ. ഈ ആക്ടിൽ, സന്ദർഭം മറ്റു തരത്തിൽ ആവശ്യപ്പെടാത്തപക്ഷം—

(എ) "ശക്തി" എന്നാൽ വൈദ്യുതശക്തി എന്നർത്ഥമാകുന്നു.

(ബി) "ലൈസൻസുകാരൻ" എന്നാൽ ഒരു കമ്പനിയോ തദ്ദേശാധികാരസ്ഥനോ ഉൾപ്പെടെ, 1910-ലെ ഇൻഡ്യൻ വിദ്യുച്ഛക്തി ആക്ട് (1910-ലെ 9-ാം കേന്ദ്ര ആക്ട്) 2-ാം ഭാഗപ്രകാരം വൈദ്യുതശക്തി വിതരണം ചെയ്യുന്നതിന് ലൈസൻസു നൽകപ്പെട്ട ഏതെങ്കിലും ആൾ എന്നോ, ഒരു കമ്പനിയോ, തദ്ദേശാധികാരസ്ഥനോ ഉൾപ്പെടെ വൈദ്യുതശക്തി, നൽകുകയോ വിതരണം ചെയ്യുകയോ ചെയ്യുന്ന

ത്തിന് മേല്പറഞ്ഞ ആക്ടിലെ 3-ാം വകുപ്പ് അനുസരിച്ച് ഗവണ്മെന്റിന്റെ അനുമതി സിദ്ധിച്ച ഏതെങ്കിലും ആളെന്നോ അർത്ഥമാകുന്നു.

(സി) "വീട്ടുകാര്യങ്ങൾക്കും പൊതുക്കാര്യങ്ങൾക്കും വേണ്ടിയുള്ള ശക്തിവിതരണം" എന്നാൽ താഴെപ്പറയുന്ന ആവശ്യങ്ങൾക്കുള്ള ശക്തിവിതരണം എന്നർത്ഥമാകുന്നു:—

(i) ദീപപ്രകാശനവും വിളക്കുകളുടെയും പങ്കകളുടെയും സംയുക്തസ്ഥാപനവും (റേഡിയോയും ഫോട്ടോഗ്രാഫിയും ഉൾപ്പെടുന്നു);

(ii) തെരുവുവിളക്കുകൾ;

(iii) ശീതകാരിയന്ത്രം (റഫ്രിജറേറ്റർ), ചെറുതരം പാചകയന്ത്രങ്ങൾ, താപനയന്ത്രങ്ങൾ (ഹീറ്റേഴ്സ്), പമ്പുകൾ, തയ്യൽമെഷീൻ, പ്രക്ഷാളനയന്ത്രങ്ങൾ, മൂന്നു കുതിരശക്തിയിൽ കീഴിലുള്ള മോട്ടോറുകൾ എന്നിവയും, പ്രത്യേകസർക്യൂട്ടിന്മേൽ അളക്കപ്പെടുന്നവയും വീട്ടുകാര്യങ്ങൾക്കും പൊതുക്കാര്യങ്ങൾക്കും വേണ്ടിയുള്ളവയുമായ മറ്റു ചെറുതരം ഉപകരണങ്ങളും,

(iv) പ്രത്യേകം അളക്കപ്പെടുന്ന സർക്യൂട്ടിന്മേൽ എയർ കണ്ടീഷന് വേണ്ടിയുള്ള പ്ലാന്റ്,

(v) ഉത്സവവിശേഷങ്ങളോടെ ഉപയോഗിക്കുന്നവക്കും വാണിജ്യസംബന്ധമല്ലാത്ത സ്ഥാപനങ്ങൾക്കുംവേണ്ടിയുള്ള "എല്ലാ വൈദ്യുതഗൃഹ" സംബന്ധമായ വിനിയോഗവും.

(ഡി) "വ്യവസായികാവശ്യങ്ങൾക്കുവേണ്ടിയുള്ള ശക്തിവിതരണം" എന്നാൽ താഴെപ്പറയുന്ന ആവശ്യങ്ങൾക്കുള്ള ശക്തിവിതരണം എന്നർത്ഥമാകുന്നു:—

(i) ചലച്ചിത്ര യന്ത്രങ്ങളുടെ സംസ്ഥാപനം (ലൈറ്റും പങ്കകളും ശക്തിയും)

(ii) താൽക്കാലിക ദീപപ്രകാശനവും ദീപപ്രകടനവും;

(iii) വ്യവസായികവും കാർഷികവുമായ ഉപയോഗം

3. <u>സർചാർജ്ജ് ചുമത്തൽ.</u> (1) ഗവണ്മെന്റോ ലൈസൻസുകാരനോ നടത്തുന്ന എല്ലാ ശക്തിവിതരണത്തിന്റെയും വിലയിന്മേൽ, വീട്ടുകാര്യങ്ങൾക്കും പൊതുക്കാര്യങ്ങൾക്കും വേണ്ടിയുള്ള ശക്തിവിതരണം സംബന്ധിച്ച് 12½ ശതമാനം നിരക്കിലും, വ്യവസായികാവശ്യങ്ങൾക്കുള്ള ശക്തിവിതരണം സംബന്ധിച്ച് 20 ശതമാനം നിരക്കിലും സർചാർജ്ജ് (2)-ാം ഉപവകുപ്പിൽ വ്യവസ്ഥ ചെയ്തിട്ടുള്ളതൊഴികെ, എന്നാൽ (3)-ാം ഉപവകുപ്പിലെ വ്യവസ്ഥകൾക്ക് വിധേയമായി, ഈടാക്കപ്പെടുന്നതാണ്.

(2) ഒരു ലൈസൻസുകാരൻ തന്റെ ആഫീസാവശ്യത്തിന് ഉപയോഗിക്കുന്ന ശക്തിവിതരണത്തിന്റെ കാര്യത്തിൽ അഥവാ ലൈസൻസുകാരൻ വില കൂടാതെ അയാളുടെ സ്റ്റാഫ് ക്വാർട്ടേഴ്സിലേക്കു നടത്തുന്ന ശക്തിവിതരണത്തിന്റെ കാര്യത്തിൽ, (1)-ാം ഉപവകുപ്പിൽ പ്രസ്തുതമായ നിരക്കുകൾ പ്രകാരം സർചാർജ്ജ് ഈടാക്കാവുന്നതല്ല.

(3) ഒന്നുകിൽ എൽ. റ്റി. യോ അഥവാ എച്ച്. റ്റി. യോ ആയ വ്യവസായികാവശ്യങ്ങൾക്കുള്ള ശക്തിവിതരണത്തിന്റെ കാര്യത്തിൽ

തൽക്കാലം ഊർജ്ജിതത്തിലിരിക്കുന്ന താരിഫ് അനുസരിച്ച് അനുവദനീയമായ 5 ശതമാനമോ 10 ശതമാനമോ പരിമിതിയിൽ കൂടുതലായി ലൈറ്റിംഗിനും പങ്കകൾക്കും ഉപയോഗിച്ചിട്ടുള്ള ശക്തിയെ സംബന്ധിച്ചിടത്തോളം, ആ കൂടുതൽ, ലൈറ്റിംഗിനും, വിളക്കുകളുടെയും പങ്കകളുടെയും സംയുക്തസമ്പന്നത്തിനുംവേണ്ടിയുള്ള ശക്തിവിതരണം ആയിരുന്നാലെന്നപോലെ, അതിന് 12½ ശതമാനം നിരക്കിൽമാത്രം സർചാർജ് ചുമത്തപ്പെടുന്നതാണ്.

വിവരണം:—ഈ വകുപ്പിന്റെയും 4-ാം വകുപ്പിന്റെയും ആവശ്യങ്ങൾക്കായി, ശക്തിവിതരണത്തിന്റെ വില—

(i) കൃത്യമായി പണം അടച്ചു തീർക്കുന്നതിന് വട്ടം വല്ലതും ഉണ്ടെങ്കിൽ അതു കുറവു ചെയ്യാതെ, ശക്തിവിതരണം ചെയ്യുന്നതിനുള്ള ചാർജ്ജുകൾ ആയും,

(ii) തെരുവുവിളക്കുകൾ വയ്ക്കുന്നതിനുള്ള ചാർജ് ഉൾപ്പെടെയുള്ളതായും കണക്കാക്കപ്പെടുന്നതാണ്.

4. സർചാർജ്ജ് പിരിച്ചെടുക്കൽ. (1) 3-ാം വകുപ്പനുസരിച്ചു ചുമത്തപ്പെട്ടിട്ടുള്ള സർചാർജ്—

(എ) ഗവണ്മെന്റ് ഇലക്ട്രിസിറ്റി ഡിപ്പാർട്ടുമെന്റാണ് ശക്തി നൽകുകയോ വിതരണം ചെയ്കയോ ചെയ്യുന്നതെങ്കിൽ ആ വക എല്ലാം കാര്യങ്ങളിലും ആ ഡിപ്പാർട്ടുമെന്റും,

(ബി) ലൈസൻസുകാരനാണ് ശക്തി നൽകുകയോ വിതരണം ചെയ്കയോ ചെയ്യുന്നതെങ്കിൽ ആ വക എല്ലാം കാര്യങ്ങളിലും ഗവണ്മെന്റിനുവേണ്ടി, ലൈസൻസുകാരനും, ശക്തിവിതരണത്തിന്റെ വിലയോടൊന്നിച്ച്, ഈടാക്കേണ്ടതാണ്.

(2) ഈ വകുപ്പനുസരിച്ച് പിരിച്ചെടുത്ത മുഴുവൻ തുകയും ലൈസൻസുകാരൻ എല്ലാം മാസവും ഗവണ്മെന്റിൽ അടയ്ക്കേണ്ടതാണ്. അപ്രകാരം പിരിച്ചെടുത്ത തുകയുടെ ഒരു ശതമാനം ഈടാക്കൽ ചാർജായി എടുപ്പാൻ അയാൾക്ക് അവകാശം ഉണ്ടായിരിക്കുന്നതാണ്.

5. ഈടാക്കേണ്ടുന്ന തുകകൾ എങ്ങനെ ഈടാക്കണമെന്ന്.—ഈ ആക്റ്റിലെ വ്യവസ്ഥകളനുസരിച്ച് ഗവണ്മെന്റിലേയ്ക്കു ചെല്ലാനുള്ളതും അടച്ചുതീർന്നിട്ടില്ലാത്തതുമായ എല്ലാ തുകകളും, ഭൂനികുതി കുടിശ്ശികയെന്നപോലെ ഈടാക്കപ്പെടുന്നതാണ്.

6. സർചാർജ്ജു വസൂലാക്കാതെ ലൈസൻസുകാരൻ ശക്തിവിതരണം നടത്തരുതെന്ന്.—3-ാം വകുപ്പിൽ പറഞ്ഞിട്ടുള്ള നിരക്കിൽ സർചാർജ്ജ് വസൂലാക്കാതെയാതൊരു ലൈസൻസുകാരനും, വീട്ടുകാര്യങ്ങൾക്കും പൊതുകാര്യങ്ങൾക്കും അഥവാ വ്യാവസായികമോ മറ്റു വകയോ ആയ കാര്യങ്ങൾക്ക് ശക്തി നൽകുകയോ വിതരണം നടത്തുകയോ ചെയ്യുന്നത് ന്യായാനുസൃതമായിരിക്കുന്നതല്ല.

7. 6-ാം വകുപ്പു ലംഘിച്ചാലുള്ള ശിക്ഷ.—ഏതെങ്കിലും ലൈസൻസുകാരൻ 6-ാം വകുപ്പിലെ വ്യവസ്ഥകളെ ലംഘിക്കുന്നതായാൽ, അയാളെ

ഒരു മജിസ്ട്രേട്ടിൻെറ മുമ്പാകെ കുററസ്ഥാപനം ചെയ്യുന്നതോടുകൂടി അഞ്ഞൂറു രൂപയോളം വരാവുന്ന പിഴ നൽകി ശിക്ഷിക്കപ്പെടുന്നതാണ്.

8. ശക്തി നൽകുന്നതിനുള്ള കരാറിന്മേൽ ആക്ടിനുള്ള പ്രാബല്യം.—ഈ ആക്ടിലെ വ്യവസ്ഥകൾക്ക് വിദ്യുച്ഛക്തി നൽകുന്നതിലോ വിതരണം ചെയ്യുന്നതിലോ തൽക്കാലം നിലവിലിരിക്കുന്ന ഏതെങ്കിലും നിയമത്തിലോ, ഏതെങ്കിലും കരാറിലോ അപേക്ഷയിലോ, വിപരീതമായി എന്തുതന്നെ അടങ്ങിയിരുന്നാലും, പ്രാബല്യം ഉണ്ടായിരിക്കുന്നതാണ്.

9. റദ്ദാക്കലും ഒഴിവാക്കലും (1) 1125-ലെ പൊതുരക്ഷാ നടപടി ആർഡിനൻസ് അനുസരിച്ച് പുറപ്പെടുവിച്ചിട്ടുള്ള 1950-ലെ തിരുവിതാംകൂർ-കൊച്ചി ഇലക്ട്രിക് സപ്ലൈ സർചാർജ് ഉത്തരവും, 1122-ലെ 8-ാമത് കൊച്ചി, അത്യാവശ്യസാധനങ്ങളുടെ നിയന്ത്രണവും ആവശ്യപ്പെടൽ അധികാരങ്ങളും ആക്ട് അനുസരിച്ച് പുറപ്പെടുവിച്ചിട്ടുള്ള 1950-ലെ തിരുവിതാംകൂർ-കൊച്ചി ഇലക്ട്രിക് സപ്ലൈ സർചാർജ് ആർഡറും ഇതിനാൽ റദ്ദാക്കിയിരിക്കുന്നു.

(2) (1)-ാം ഉപവകുപ്പനുസരിച്ച് റദ്ദാക്കപ്പെട്ട ഉത്തരവിൻപ്രകാരം ചുമത്തുകയും, പിരിച്ചെടുക്കയും ചെയ്തിട്ടുള്ള സർചാർജ്ജ്, ആ സർചാർജ്ജ് ചുമത്തുകയും പിരിക്കയും ചെയ്ത ദിവസം ഈ ആക്ട് ഊർജ്ജിതത്തിലിരുന്നിരുന്നാൽ എങ്ങനെയും അതുപോലെ ഈ ആക്ടുപ്രകാരം ചുമത്തപ്പെടുകയും പിരിച്ചെടുക്കുകയും ചെയ്ത സർചാർജായി പരിഗണിക്കപ്പെടുന്നതാണ്.

(3) (1)-ാം ഉപവകുപ്പനുസരിച്ച് റദ്ദാക്കപ്പെട്ട ഉത്തരവിൻപ്രകാരം ഗവണ്മെൻറിലേക്കു ചെല്ലാനുള്ളതും അടച്ചു തീർക്കാതെയുള്ളതുമായ എല്ലാ തുകകളും ഈ ആക്ട് നടപ്പിലാകുന്നതോടുകൂടി ഈ ആക്ടുപ്രകാരം ഗവണ്മെൻറിലേക്ക് ചെല്ലേണ്ടതും അടച്ചുതീർക്കാതെയുള്ളതുമായ തുകകളായി കരുതപ്പെടേണ്ടതും, ഈ ആക്ടിലെ വ്യവസ്ഥകൾ അവ ഈടാക്കുന്നതു സംബന്ധിച്ച് പ്രയോജ്യമാകുന്നതുമാണ്.

(A true Translation)

K. DAMODARAN,
Head Translator to Government.

Gazette No. 27 dated 5th July 1955.

PART I

NOTIFICATION.

L. Dis. 11488|55|DD. *22nd June 1955.*

The following decision of the Labour Appellate Tribunal of India, Madras in Appeal No. III-68|9|54 of 1954 is hereby published for the information of all concerned.

Government Secretariat,
Development Department,
Labour Section,
Trivandrum.

By order of His Highness
the Raj Pramukh,
K. NARAYANA MENON,
Addl. Secretary to Government.

In the Honourable Labour Appellate Tribunal of India, MADRAS

1. APPEAL No. III—68|1954

Burmah-Shell Oil Storage and Distributing Company of India Limited, Madras Branch — *Appellants.*

Versus

1. The workers in the said Company's establishments at Bangalore, Mysore and Bangarpet in Mysore State represented by the Burmah Shell Employees' Union, 17, Baker Street, G. T. Madras — *Respondents.*
2. The workers in the said establishments in Mysore State who are not members of and who are not represented by the Burmah Shell Employees' Union. — *Respondents.*

In the matter of an appeal against the award of the Industrial Tribunal, Bangalore in case No. 22|52-53 and published in the Mysore State Gazette dated the 28th January 1954 in respect of an industrial dispute between the above parties.

2. APPEAL No. III-9|54.

Workers of Burmah Shell Oil Storage and Distributing Company of India Limited, in Travancore-Cochin State other than Ernakulam Installation, represented by Burmah Shell Employees' Union, Madras. — *Appellants.*

Versus

1. Burmah-Shell Oil Storage and Distributing Company of India Limited, Ernakulam.

2. Non-members of Burmah-Shell Employees' Union in establishments other than Ernakulam Installation, T. C. State— *Respondents.*

In the matter of an appeal against the award of Industrial Tribunal, Ernakulam in Adjudication No. 16|53 and published in the Travancore-Cochin Government Gazette dated 8th December 1953 in respect of an industrial dispute between the above parties.

Madras dated the 30th May, 1955.

PRESENT.

SRI S. GOVINDA MENON, *President.*

SRI M. D. LALKAKA, *Member.*

APPEARANCES:—

For the Company:—

Shri G. B. Pai and Shri A. S. Jeffares, Executive Committee Members of Employers Federation of South India with Shri S. Ganapathy and Shri H. W. Norton, Officers of the Company.

For the Workmen:—

Sri S. Guruswamy, President, Sri S. Rajagopal, General Secretary and Sri N. Thyagarajan, Vice President of the Union.

States: Mysore|Travancore-Cochin.

Industry: Petroleum and Oil.

DECISION.

These appeals arise from the decision of two different Industrial Tribunals. However, they are practically between the same parties, namely, Burmah-Shell Oil Storage and Distributing Company of India Limited operating in the States of Mysore and Travancore-Cochin and their workmen and relate to identical matters.

Appeal No. III-9|54 is against the decision of the Industrial Tribunal at Ernakulam in Adjudication No. 16 of 1953 and it has been filed by the Burmah Shell Oil Storage and Distributing Company of India Employees Union on behalf of the workers of the Burmah Shell Oil Storage and Distributing Co., of India in Travancore-Cochin. The other appeal, namely, No. III-68|54 is from the decision of the Industrial Tribunal at Bangalore in Case No. 22|52-53 and the appellant therein is the Management, Viz., Burmah Shell Oil Storage and Distributing Co., of India Ltd., Madras Branch. At the request of the parties these two appeals, were heard together and they can be disposed of by this common judgment.

The matters sought to be agitated in these appeals by the Memoranda of Appeal were relating to (1) bonus awarded by the Tribunals below to the workmen for the years 1950, 1951 and 1952 and (2) the question whether certain employees of the Company, viz., those falling within the categories of (a) Lady Secretary, and (b) Depot Superintendent and Assistant Depot Superintendent, are "workmen" as defined in section 2 (s) of the Industrial Disputes Act, 1947 so as to entitle the Union to raise an Industrial dispute on their behalf with regard to the bonus claimed.

When the appeals were taken up for hearing, the parties stated that in both these appeals, the disputes between them so far as they relate to the quantum of bonus, have been compromised between them and that the settlement has been fully implemented so far as all the employees whose position as workmen is not in dispute between the parties, and that the employer has also undertaken to implement the settlement in respect of any other person who may ultimately be held to be a workmen by this Tribunal as a result of these appeals. Under these circumstances the parties applied and were allowed to withdraw the appeals to the extent to which they relate to the quantum of bonus. In view of the above, the only issue which survives is that relating to the question as to whether the employees mentioned above or any of them are "workmen" and in consequence entitled to claim the bonus as awarded in those two cases.

For the purposes of these appeals, the parties have stated before us that they are agreed that the designations of "Depot Superintendent" and "Assistant Depot Superintendent" are applied to employees the nature of whose work is exactly the same and that they may be treated for the purposes of these appeals as falling within the same category.

A Full Bench of the Labour Appellate Tribunal has held in the United Commercial Bank case, (1952) L. A. C. 198, 210, that the expression 'any person' occurring in the definition of the words 'Industrial Dispute' in section 2(k) of the Industrial Disputes Act, 1947, has to be interpreted in terms of the word 'workman', as defined in section 2(s) of the Act, and cannot be applied to persons other than workmen as so defined or discharged workmen; and that the expression 'any person' as used in section 2(k) means and includes, only those persons who on being employed or re-employed or reinstated, would come under the category of 'workman' as defined in section 2(s) of the Act. In view of this Full Bench decision, which is binding on us, and with which with great respect we agree, any argument that the Union can raise an industrial dispute on behalf of any person whatsoever, or any employee, even though he may not fall within the definition of the word 'workman' as given by section 2(s) of the Industrial Disputes Act, cannot be seriously pressed. We have, therefore, only

to consider whether the employees, whose position is in dispute in these cases fall within the definition of the word 'workman' as given in section 2(s) of the Act.

The Industrial Tribunal, Bangalore, as a result of its appreciation of the evidence adduced by the parties before it, came to the conclusion that the employees of the Company falling within the categories of Lady Secretary, Depot Superintendent and Assistant Depot Superintendent, are workmen as defined in section 2(s) of the Industrial Disputes Act, 1947, and accordingly passed an award directing payment of bonus to these employees also. The Management in their appeal objects to that finding and hence its appeal No. III-68|54. On the other hand the Industrial Tribunal, Ernakulam, before whom the question was raised only with regard to Depot Superintendents practically upon the same evidence with regard to these employees, found that the Depot Superintendents were not 'workmen'. The Union objects to this finding and hence its appeal No. III-9 of 1954. The dispute with regard to the Lady Secretary and Asst. Depot Superintendents was not raised before the Ernakulam Tribunal and it had not, therefore, to say anything about them.

Shri G. B. Pai, Advocate, appearing on behalf of the Management, urges before us that the appreciation of the evidence adduced before it by the Bangalore Tribunal is most unsatisfactory, may perverse, and that if the evidence is read and understood in the correct perspective, it is impossible to arrive at any such conclusion as arrived at by that Tribunal and that therefore it has become necessary for us to examine the evidence and pronounce a decision ourselves. In any event, we are sure that in these Appeals, we will be justified in embarking upon an examination of the evidence, as the award is in respect of bonus and therefore falls within section 7(a) (ii) of the Industrial Disputes (Appellate Tribunal) Act, 1950 and the determination of the question which remains for consideration by the Appellate Tribunal is only incidental to the grant of bonus by the Industrial Tribunals concerned.

Before we embark upon an examination of the evidence it is necessary to make a few preliminary observations regarding the origin and history of the controversy now before us. The Burmah-Shell Oil Storage and Distributing Company of India Limited is a very large concern engaged in importing, distributing and selling petroleum and other products of mineral oil all over India. They have, besides their head and divisional offices in several important towns, installations in certain ports, where large quantities of stock imported into the country are stored in the first instance. From these installations, the imported stocks are transported to and stored in smaller quantities in different centres. These small storing centres are known by the name of Depots and they are in the charge of Depot Superintendents, who have staff of their own which at times consists, apart from labourers, of Asst. Depot Superintendents, and

clerks. Indisputably these Depot Superintendents are in sole charge of the depots and answerable to the Company in all matters connected with the storage and distribution of supplies received at the depot. It appears that the policy of the Management has been to provide Depot Superintendents with assistants and clerical staff commensurate with the nature and extent of the work in each depot. From the depots stocks are diverted to other places where still smaller quantities are stored for sale to the consumers direct. This is the organisational basis of the working of the Company. In the head and divisional offices sometimes Lady Secretaries are appointed to help the officers in charge of such offices.

The controversy now confronting us relates to three categories of employees of the Company, Viz., Lady Secretaries, Depot Superintendents and Assistant Depot Superintendents, and as already remarked, the problem arising for determination is whether these employees, fall with the ambit of the definition of the expression 'workman' as given in section 2(s) of the Industrial Disputes Act, 1947. It may be of interest to mention here that the controversy has been raised not at the instance of any employee falling within any of these categories but at the instance of the Union who claim to be entitled to raise industrial disputes on their behalf also, as they are according to the case of the Union, 'workmen'.

A controversy relating to the statns of employees serving the Company in Madras and falling under the categories in dispute as well as other categories was raised before the Industrial Tribunal, Madras in dispute No. 2 of 1952. In that dispute, the Management denied that these employees were 'workmen' and therefore, challenged the right of the Union to raise any dispute on their behalf. The Industrial Tribnnal, after going into the question, held by its Award that the categories of staff about whom the dispute was raised were not 'workmen' for the purposes of the Industrial Dispntes Act and that no industrial dispute could be raised by the Union in respect of them.

Against the material portion of this Award there was an appeal to the Labour Appellate Tribunal by the Union on behalf of the workers of the Company in the Madras State. That appeal (Appeal No. III-27|52) succeeded and the Appellate Tribunal reversed the decision of the Industrial Tribunal regarding the employees falling within the category of Lady Secretary, Depot Superintendent and Assistant Depot Superintendent holding that they were 'workmen' and fell under the definition of that expression as given in section 2(s) of the Industrial Disputes Act, while upholding the decision of the lower Tribnnal with regard to the other categories of employees.

It is clear beyond doubt from the judgments of both the Industrial Tribunal, Madras and the Labour Appellate Tribunal which are exhibited in the present cases, that the question at issue was decided solely with reference to Ext. M. 25 put in

before these Tribunals as an agreed list relating to the duties of these categories of Company employees, although it appears from the evidence of some of the witnesses in the cases before us that the Industrial Tribunal, Madras conducted a local inspection of the Company's depots at Mangalore, Coimbatore and Vizagapatnam and in deciding the case, it evidently had the benefit of the impression gained by the inspections it conducted. However, there being no reference to such local inspections in the award given by the lower Tribunal in that case certainly the Labour Appellate Tribunal had nothing but the agreed list (Ex. M. 25) to go by for the purpose of deciding the appeal before it.

Against this decision of the Labour Appellate Tribunal, the Company moved the Madras High Court for the issue of a writ of *certiorari* to quash the same. The High Court in dealing with the writ application and to the extent which was necessary for the disposal of the same, went into the question whether the employees concerned were 'workmen' or not; and in doing so the learned Judge who heard the matter came to the conclusion that the view taken by the Appellate Tribunal was correct and therefore, rejected the application. It may be stated here that in disposing of the writ application, the High Court dealt with the question at issue purely on the basis of the said Ex. M. 25; because that was the only evidence on record with regard to the respective duties performed by the employees concerned and these are summarised in the Judgment of the High Court from the agreed list put in as Ex. M. 25.

The Award of the Labour Appellate Tribunal in that case has become final and conclusive between the parties, viz., the Company and its workers in the Madras State; but it does not relate to the workers of the Company in the States of Mysore and Travancore-Cochin who are concerned in these appeals.

No doubt if the question of the status of these employees also had to be decided solely with reference to Ext. M. 25, without any further or explanatory evidence, certainly the conclusions arrived at by the Labour Appellate Tribunal and the Madras High Court would necessarily be entitled to be given the greatest weight. However, so far as we are concerned, considerable other material which was placed before the lower Tribunals in both these matters, is available to us for helping us in construing the document in question and supplementing the evidence furnished thereby, and we must give our careful consideration to the evidence led separately in each case as a whole, and cannot confine our consideration to the particular exhibit alone, as the Labour Appellate Tribunal and the Madras High Court had to do in the case of the Madras employees of the company in the absence of other material evidence on record to explain or supplement that Exhibit.

Before proceeding to examine the evidence led in the present cases, we would refer to some of the reported decisions dealing with the principles to be applied in deciding the question before

us, *viz.*, whether a particular employee, having regard to the nature of his duties, should be taken as falling within or outside the definition of the term 'workman' as given in section 2(s) of the Industrial Disputes Act, 1947. In formulating these principles, several decisions of the Labour Appellate Tribunal had suggested different tests to be applied, one main test being taken to be whether the employee is an officer, that is to say, one who has got directional or controlling powers. The prior decisions were reviewed by a Full Bench of the Labour Appellate Tribunal in the Bank Disputes Award given in April 1954 (unreported). Paragraph 205 of that award summarises the decision arrived at by the Full Bench on this question as follows:—

> "In view of these decisions the test of 'directional and controlling power' must be regarded as of doubtful validity. The relevant question is not whether the employee is an officer, but whether the employee performs clerical work so as to place him in the category of 'workman' under the Act. The approach therefore, should be not from the angle of testing whether the employee is an officer but from that of examining the duties to be performed by the employee and deciding whether they are in the main clerical or not. For the purpose of administration a gradation between employees is unavoidable and the duties of a clerk are not inconsistent with a limited amount of supervision and control over other employees. But in each case it will be essential to examine the facts and to determine what is the nature of the work. The question is essentially one of fact and no general answer to cover all cases is possible".

The Full Bench decision was followed and applied by the Labour Appellate Tribunal in the subsequent case of the United Commercial Bank, (1954) L. A. C. 760, 763. We find that even in a previous case decided by the Labour Appellate Tribunal in February 1954, being the Phaltan Sugar Works' case, (1954) L. A. C. 788, the Tribunal came to the same conclusion and has stated at p. 791 the principles that should be applied in such cases as follows—

> "Employees in any industry, in our opinion, may be divided broadly into the following classes:—
>
> 1. Those who are workmen within the meaning of that term as contained in section 2(s) of the Industrial Disputes Act, 1947.
> 2. Those who are not such workmen.
>
> Those who are not workmen may be sub-divided further into the following two classes:—
>
> (a) Those who are officers, that is to say, who have got directional or controlling powers.

(b) Those who may not possess any directional or controlling powers, yet they may not be wrokmen because they are not doing manual or clerical work.

It will be seen that the definition of the expression 'workman' confines it only to those who do manual or clerical work. Hence employees not doing manual or clerical work would not fall within the definition of a 'workman'. In view of the Full Bench Decision, which is binding on us, and the two other decisions last cited, with all of which, with great respect, we are in complete agreement, it is not necessary to examine in detail all the previous decisions which have been placed before us and which must be taken as having been decided on their own facts and in the light of the principles which in each case were taken to decide the particular question coming before the Tribunal in that case. We would, however, refer to only one case decided by the Labour Appellate Tribunal, which has been cited on behalf of the workers as applicable to the case of the Depot Superintendents and Assistant Depot Superintendents in the present appeals, viz., the Banares Light and Power Company's case, 1952) L. A. C. 743. In that case it was held on the facts proved before the Tribunal that an employee in charge of the stores of the Company, whose duties were essentially of a clerical nature, *viz.*, to issue and receive back stores, to keep an account of the vouchers, to maintain the registers and to keep an account of the stores was a 'workman' as defined in section 2(s) of the Industrial Disputes Act. In considering whether the decision in that case can be applied to the facts of the cases before us, we must see whether the employees concerned in the present appeals are primarily entrusted only with such duties as would devolve on an employee in charge of the stores of an electricity concern, or whether they have to perform other duties of a different nature also, their work being not confined merely to the performance of the duties of an employee entrusted only with the work of looking to the receipt, storage and issue of stores, which duties, by themselves, especially when performed in the main business place of the concern, would naturally be regarded only as essentially clerical or manual in nature.

The relevant portion of section 2(s) of the Industrial Disputes Act, defines the term 'workman' to mean 'any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute'. Of course in applying this definition to the facts of a particular case, the negative test with regard to directional and controlling powers, which was applied as the sole test in several of the earlier cases, is useful in many cases, in that it allows an elimination in the first instance of employees with powers, substance of supervision and control who may be classified as 'officers', so as to exclude them from the class of

employees falling within the definition of the term 'workman' given in the Act. This test, however, is not by itself sufficient to exclude all 'non-workmen' according to the definition, and even in the case of employees who may not fall within the class of 'officers' indicated above, a further positive test has to be applied, in the light of the principles laid down by the last decided case to which we have referred. In order to apply this positive test, after ascertaining the nature of the work the employee is primarily required to do, the Tribunal must decide whether or not that work can be regarded as principally falling within the class of work which can be properly described as 'manual' or 'clerical', irrespective of the fact of any skill being required or not for the performance of such work.

A 'clerk' according to the ordinary dictionary meaning of that term is a person employed to keep records or accounts or to have charge of correspondence and the like and clerical work is such as would be expected to be done by such an employee, while manual work is what would be done by the hand or hands of the employee. Both manual work as well as clerical work, in the sense in which these terms must be taken to have been used in section 2(s), connote more or less routine work, skilled or otherwise, which does not require any material amount of initiative in its performance; the employees entrusted with such work not being required to perform substantial duties of a supervisory, directional or controlling nature.

To sum up the question whether an employee is a 'workman' or not is to be decided according to the principles above enunciated, with reference to the nature of his duties irrespective of his designation. Each case therefore has to be decided on the facts as established by the whole of the evidence led before the Tribunal. We would, therefore, now proceed to review the evidence led in each of these cases.

We may premise our discussion of the evidence before us by observing that the main contention of the Union urged before us to the effect that the agreed statement Ext. B, which is the same as Ex. M-25 exhibited in the Madras case, clinches the question and that it is not open to the Company to seek to explain or further clarify the nature of the duties mentioned therein by leading further evidence, is devoid of force. So far as these cases are concerned, there was nothing in the way of the parties by way of estoppel or otherwise, to prevent them from leading such other evidence to explain or clarify the duties mentioned in Ext. B, as they thought fit to lead in each case.

We shall now proceed to consider the dispute between the parties upon which we are now called upon to pronounce a decision. We shall take up first the case of the Lady Secretaries. We have no conflicting findings regarding this category of employees as in the case of Depot Superintendents, as this matter was in dispute only before the Mysore Tribunal. The

agreed statement Ex. B describes the nature of the duties of a Lady Secretary thus:—

> "A Lady Secretary is engaged wherever there is stenographical, clerical or secretarial work of a confidential nature to be done. This does not mean that all her work is necessarily confidential."

This description is couched in plain and unambiguous language and prima facie left no scope for a finding on its basis that the duties of such an employee are otherwise than of a clerical or manual nature. As observed by the Lucknow Bench of this Tribunal: "The specification of the duties assigned to a Lady Secretary clearly shows that she works under her superior officer as a typist and confidential clerk. The Tribunal (the Lower Tribunal in that case) has held that she cannot be treated as a workman under the Act because her duties are of secretarial and confidential nature. We do not think that this view is right. The definition is very widely worded. It contains no words of limitation by reason of which an employee, who works as a skilled or unskilled clerk for hire or reward and occupies a position of trust or confidence having no supervisory or directional duty to perform can be excluded from its ambit. We are, therefore, of opinion that a Lady Secretary is a workman and is covered by the definition".

When the matter came up before the Madras High Court in the writ petition, the High Court in this connection observed:—

> "I might first dispose of the case as regards the Lady Secretaries. The duties mentioned in Ex. M-25, show that they are merely doing a clerical work, which might sometime involve work of a confidential nature. But this last qualification does not detract or qualify the character of the work, which is wholly clerical in its nature".

An attempt was made by the Company before the Bangalore Tribunal to supplement the evidence furnished by Ex. B in order to get over the inference that had already been drawn in the Madras case against the view put forward by the Company, by leading further evidence. That evidence consists of the testimony of RW-2, Miss Dowley, who was then working as Lady Secretary in the Bangalore Divisional Office of the Company and Ex. E a letter sent on 28th May, 1953 by Miss Dowley to the Secretary of the Burmah Shell Employees' Union at Madras stating that she had no desire whatsoever to become a member of the Union or to be associated in any way with the demands which the Union might see fit to make on behalf of Lady Secretaries. It may at once be stated that in deciding the question before us, we are not concerned with the desire or attitude of an employee like her, as we are solely concerned with the nature of the duties performed by such employees as might be shown by the evidence.

Coming to the evidence of Miss Dowley, she practically repeats the duties performed by her as summarised in Ex. B, except that she states that she also handles on her own initiative some routine correspondence on routine matters. She, however, places great stress on the fact that above all her important duty as Secretary is to keep everything confidential. Applying the negative test to these duties as laid down by the authorities referred to above, it is not possible to hold that employees like her can be classed as 'officers' viz., those having directional or controlling powers, and at the same time applying the positive test referred to in those authorities, it must be held that the primary duties performed by such employees even though they may be skilled duties, are of a clerical or manual nature. In consequence, on the evidence led in the case, taken as a whole, it is not possible to arrive at any other conclusion than that arrived at by the Lucknow Bench of this Tribunal as also by the Madras High Court in the Madras case viz., that having regard to the duties primarily required to be performed by employees like Lady Secretaries in the service of the Company, their work is primarily of a clerical nature and as such those employees must be taken to fall within the term 'workman' as defined by Section 2(s) of the Industrial Disputes Act, 1947.

Now we shall take up the question of Depot Superintendents and Assistant Depot Superintendents, who, as already indicated, have to be treated together. In the agreed statement Ex. B, the nature of the duties of these categories of employees have been summarised as follows:—

"He is responsible for stock receipt, storage and issue and in this respect can be compared to a Storekeeper. He is also responsible for the smooth operation of the depot, the depot transport and the good condition of the depot and all its contents.

His duties involve a great deal of clerical work in completing Company's standard forms and returns. However, in major depots a clerk is provided to assist him in this work and in very large depots there are Assistant Depot Superintendents to share the work. Besides, he maintains correspondence with the Branch and Divisional Offices. He has no power to punish any clerk or workman in the depot, but he can recommend the issue of a charge sheet. In cases of severe misconduct he has the power to suspend depot staff or labour. He sanctions leave within entitlement for the labour under his control.

He has to work under instructions from Branch|Divisional Office and has no power to act beyond these instructions. He has to deal with Agents, Dealers, Customers and Railway Staff. He has to handle the Depot Imprest Cash Account, including paying labour wages from the pay roll made out by him. An Assistant Depot Superintendent at a large depot may rank level with (or even higher than) the Depot Superintendent of a small depot."

To explain further the nature of the duties of Depot Superintendents and Assistant Depot Superintendents, the Company has led additional evidence before both the Industrial Tribunals. The evidence adduced before the Bangalore Tribunal consisted of the testimony of RW-4, K. N. Khanna, working for the last six years as Mercantile Assistant and RW-5, K. Sundaresan, Depot Superintendent of the Bangalore Depot. The witnesses examined for the same purpose before the Ernakulam Tribunal were MW-2 the aforesaid Khanna, MW-3, S. Ranganathan, Depot Superintendent at Quilon, MW-4, Zakeria, Depot Superintendent at Trichur and MW-5, Jacob, Assistant Depot Superintendent at Trivandrum. Ex. F series in the Bangalore case and Ex. M-2 series in the Ernakulam case consist of certain printed forms which are used in the depots for submitting the returns.

We have carefully read through the evidence of the above mentioned witnesses and we are satisfied that save for small details, in all essential particulars they agree. Relying upon the passages occurring in Ex. B, viz., "he is responsible for stock receipt, storage and issue and in this respect can be compared to a Storekeeper" and that "his duties involve a great deal of clerical work in completing the Company's standard forms and returns," Shri Guruswami, President of the Union, contends that the duties of Depot Superintendents and Assistant Depot Superintendents are not different from those of a storekeeper, who has been held to be a 'workman' in the case reported in (1952) L. A. C. 243 to which we have already referred in a previous portion of this judgment. He frankly conceded before us that if this decision did not apply, his case would fail. As already observed, each case is to be decided upon the evidence adduced by the parties and not merely on grounds of analogy with regard to particular designations given to employees. The duties of a storekeeper employed in an electrical concern, such as was being considered in the case cited, would be merely to keep charge of the stores in the office of the concern, requiring very little initiative in their performance and in this respect would necessarily be materially different from those of a person in sole charge of the depot like those of the Company, which are normally situate at places far away from the Head and Sub-offices of the Company. Upon the evidence before us we are clearly of the opinion that it is not possible to find that the Depot Superintendent is a mere store keeper who has no duties, supervisory or directional or of a controlling nature, that is, he is none but a glorified clerk as contended by Shri S. Guruswami. The contention, we are afraid, is mainly the outcome of the loose language in which the duties of the Depot Superintendents have been allowed to be specified in Ex. B which when taken alone are capable of leading to an erroneous conclusion such as the one contended for by him. However, when Ex. B is taken not by itself but as explained in greater detail by the evidence led in each of these cases, the duties of these employees assume a different aspect. We find

for example that in the writ petition before the Madras High Court, it was taken for granted that the main work of the Depot Superintendents and Assistant Depot Superintendents was of a clerical nature in completing the Company's standard forms, returns etc. The supplementary evidence led in these cases, however, shows that the only time that the Depot Superintendents or Assistant Depot Superintendents are required to devote, if at all, in filling up these form and doing any clerical portion of the work is about half an hour out of their usual eight hours' duty during the day, or as it has been deposed to in the other case, at the most about 10 per cent of his time may be required to be devoted by the Depot Superintendent to such work; while in the case of Depot Superintendents who are furnished with clerical assistance, no material time at all would be required to be devoted to such work. As already stated, if the sole evidence before the lower Tribunals, had consisted of Ex. B alone, it might have been possible to argue as Mr. Guruswami has done, that much of the work done by the Depot Superintendents and Assistant Depot Superintendents should be classified as clerical. This however, is clearly not the position in fact as shown by the additional explanatory evidence that has been led in both these cases. That evidence is unchallenged by cross-examination and therefore, must be accepted and it leads only to one conclusion, namely, that the actual clerical portion of the work of Depot Superintendents and Assistant Depot Superintendents occupies a very minor portion of their time, even in those cases where they are at all required to do such clerical work without clerical assistance being given to them, as has been done by the Company in the case of major and larger depots. When Ex. B after specifying the storekeeping duties of those employees, mentions that they can be compared to storekeepers, the additional words used, in making such comparison, have to be noted, viz. 'in this respect'. These words clearly show that the underlying idea in making such a statement was to refer only to the portion of their duties which related to storekeeping and which were specified to be the receipt of stock and storage and issue thereof, such duties being evidently those of a storekeeper, from which it cannot necessarily follow that such were their only duties. The fact that such employees are responsible to the Company for the receipt storage and distribution of supplies of the value of several lakhs of rupees received at the Depot should not make one blind to their other duties and responsibilities, as the sole persons in charge of the depots, entrusted with the supervision thereof as required by rule 92 of the Petroleum Rules, 1937 framed by the Government under the Petroleum Act, 1937, which provide that 'all operations within an installation or storage shed shall be conducted under the supervision of an experienced responsible agent or supervisor". The responsible duties entrusted to the Depot Superintendents and Assistant Depot Superintendents have been clearly brought out in the evidence adduced in the two

cases, even when considered separately; and in this respect we are in agreement with the Ernakulam Tribunal that in view of the evidence led, it is clear that what is described in Ex. B as "a great deal of clerical work in completing the Company's standard forms and returns" would at the most amount to half an hour's work in the day and that too only in depots where there are no clerks. Such duties when performed would only be incidental to the main work of these employees, namely to control and manage the depots entrusted to them, under statutory provisions, and to exercise the supervisory duties imposed on them, in terms of rule 92 of the Petroleum Rules, to which we have already referred. Considering the evidence led with regard to the duties of those employees, which require a considerable amount of initiative to perform them, and applying even the positive test indicated by the authorities we are of the opinion, that their duties are primarily of a supervisory nature and they can be classified as 'officers' in charge of their respective depots, like sub-agents in charge of small branches of Banks in the mofussil, even though some of their incidental duties like those of such sub-agents might be described as 'clerical' or 'manual'. In this state of the evidence we are of opinion, that it must be held that the Depot Superintendents and Assistant Depot Superintendents about whom the present dispute has been raised are not 'workmen' within the meaning of the term as used in the Industrial Disputes Act, 1947 in Section 2 (s).

In the result the appeal filed by the Union, viz. Appeal No. 9|54, fails and is dismissed. As regards the other appeal, viz., Appeal No. III-68|54, it partially succeeds so far as Depot Superintendents and Assistant Depot Superintendents are concerned and fails with regard to Lady Secretaries. The award of the Bangalore Tribunal is, therefore, modified by deleting the finding in paragraph 9 (j) of the Award to the effect that Depot Superintendents and Assistant Depot Superintendents are 'workmen' within the meaning of that expression as used in section 2 (s) of the Act and by substituting a declaration that Depot Superintendents and Assistant Depot Superintendents are not 'workmen' within the meaning of section 2 (s) of the Industrial Disputes Act and are not, therefore, entitled to the benefit of the bonus granted by the lower Tribunal to the other employees of the Company concerned in the dispute. Under the circumstances of the case, we do not think any order for costs is required and, therefore, there would be no order as to costs.

PRESIDENT. MEMBER.
